

Appl. No. 10/733,649
Amdt. Dated December 11, 2006
Reply to Final Office action of September 15, 2006

REMARKS/ARGUMENTS

Applicants and Applicants' representative appreciate the telephonic conference with the Examiner on October 23, 2006. The present Response is consistent with, and provided as follow up to, that Conference.

Claims 13, 15-33 and 49-65 are currently pending in the present application. Each of claims 13, 15-33, and 49-65 is rejected as being unpatentable over Guevara, et al. (U.S. Patent No. 6,086,571) and or Guevara in combination with Gibbs (U.S. 2003/0139725) or Jarpenberg, et al. (U.S. 2003/0144643). Applicants respectfully traverse each of these rejections.

Claims 13, 15-27, and 62-65 are cancelled, at least in this application, as explained below. Applicants maintain arguments previously presented that the pending claims (including those claims which are cancelled) are patentable over the prior art cited thus far.

Regarding claim 13, FIGS. 3 or 4 of Guevara does not teach or suggest a plurality of "spaced apart" and/or "independent" elastic elements, as recited in the claim. The "zig-zag" thread of Guevara also does not provide a "generally perpendicular" relation (with the elastic composite centerline) nor elastic elements in parallel relation, as recited in claim 13 (and, as well, in claims 28, 57 and 62).

Also, FIGS. 4 and 5 of Guevara do not provide elastic elements that are spaced inwardly from the side edge(s), as recited in claim 13 (and, as well, in independent claims 28, 57 and 62). The elastics in Guevara, which are disposed along the "composite centerline" are believed to extend to the actual side edge, whereon these elastic elements are then covered by the landing 70 or the body of the article. As is common in the art, the elastic belt of Guevara is probably provided separately and fed from a roll into a web substrate as a continuous strip of elastic belt. Each elastic belt is formed by cutting a discrete piece of this continuous strip. Thus, the elastics would necessarily extend continuously on the discrete piece and to the side edges. The same is believed to be the case for the zig-zag thread of FIG. 4, although Guevara does not provide any clues in this matter.

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In any event, the "generally perpendicular" or "spaced apart" elastics of the elastic belt in FIGS. 4 and 5 clearly extend at least to the "side edge" of the "possibly de-elasticized zones." In other words, the elastic elements are not "spaced inwardly" from this "side edge" (if this "side edge" were, indeed, qualified as such).

FIG. 6A is the same structure as that discussed above in respect to FIG. 4, and thus is deficient, for the same reasons as discussed above. Moreover, the elastic belt of FIG. 6A is not spaced inwardly from the side edges as required by the subject claim. It is noted that the "non-elastic" region 120 of FIG. 6A is actually an extension tab 120 and thus, not a part of the elastic belt. The belt is attached directly to the extension tab at a side edge of the belt. The extension tab does not therefore, provide a non-elasticized region of the elastic belt.

To facilitate and expedite the prosecution of the present application, independent claim 13 and dependent claims 15-27 are cancelled. It is Applicants' intent to re-submit these same claims or claims of similar scope in a later filed continuation application. Accordingly, the present withdrawal of these claims should not be construed, in any way, as an admission that the claim is not patentable over the cited references.

Regarding claim 28, the structure claimed is patentable over the cited reference for one or more of the same reasons discussed above with respect to claim 13. Furthermore, claim 28 requires the elastic elements to be spaced from the first side edge and from the central body and the first non-elasticized region to be positioned between the elasticized region and the central body. None of the figures of Guevara meet this additional limitation.

Applicants note again that the elastic belt in FIG. 6A is attached directly to the extension ear 120 of the diaper 20 at closed end 66 (*i.e.*, its side edge). Thus, any elastic elements on the elastic belt in FIG. 6A is not spaced inwardly from its side edge but, instead, extends to and ends exactly at its side edge or closed end 66.

Applicants note that claim 28 requires further that the plurality of elastic elements have the following features: (1) spaced apart; (2) disconnected; and (3) in generally perpendicular relation with said fastening portion centerline. The "zig-zag" thread is not a "plurality of elastic elements." The "zig-zag" thread of FIG. 3 is clearly not in generally perpendicular relation with

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any centerline of the elastic belt. These threads are clearly angled, and must be configured as such, to achieve the overall configuration in FIG. 3. Applicants submit that it would be impossible to achieve the claimed elastic element configuration with the single "zig-zag" thread of Guevara (*i.e.*, a single thread that starts at the top of the belt corner and ends on the bottom of the belt). To construe the single pattern in FIGS. 3 and 4 as having some portions which may be "generally perpendicular" defies simple geometry. To construe the single "zig-zag" thread as a plurality of elastic elements defies the clear meaning of the term "plurality." Applicants submit that it cannot define this limitation and this distinction any more clearly. If Applicants intended to define portions of a single elastic element as "spaced apart," it would have done so. To construe the single "zig-zag" thread as having a plurality of elastic elements and to be in generally perpendicular relation ignores clear and positive limitations in the subject claims.

Moreover, claim 28 requires the elastic elements to be spaced apart and further, to be disconnected. The "zig-zag" threads of FIGS. 3 and 4 cannot be construed in any way to be a plurality of spaced apart elastic elements or a plurality of disconnected elastic elements.

Applicants further note that the combination of FIGS. 3 and 6A do not cure the deficiencies discussed above. The combination still lacks several elements recited in claim 28.

Regarding independent claim 57, the structure recited is patentable over the cited reference for one or more of the same reasons discussed above in respect to claim 13 and claim 28. In addition, claim 57 requires a plurality of successive elastic elements in an arrangement to be formed from one elastic strand, each elastic element being a discrete severed section of the elastic strand. Clearly, none of the cited references meet this additional limitation.

Regarding claim 62, the structure described by the claim is patentable for one or more of the same reasons discussed above in respect to claims 13, 28 and 57. In particular, claim 62 requires an elastic construction that is spaced inwardly from each side edge, and further, first and second non-elasticized regions positioned between a side edge and an elasticized region. These structural limitations are not taught or suggested by Guevara.

To facilitate and expedite the prosecution of the present application, independent claim 62 and dependent claims 63-65 are cancelled. It is Applicants' intent to re-submit these same

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claims or claims of similar scope in a later filed continuation application. Accordingly, the present withdrawal of these claims should not be construed, in any way, as an admission that the claim is not patentable over the cited references.

Accordingly, each of the independent claims in the pending set, as well as claims dependent from these independent claims, are patentable over the cited references.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

No fee is believed to be due at this time. If the appropriate Petition for an Extension of Time is not attached hereto (or any other Petition required of the application), this statement shall serve as Applicants' Petition to the U.S.P.T.O. The Commissioner is hereby authorized to charge any additional fees or credit any overpayments related to this response to Deposit Account No. 50-0997 (DSGI-1000US0), maintained by Paula D. Morris & Associates, P.C. d/b/a Morris & Amatong, P.C..

The undersigned is available for consultation at any time, if the Examiner believes such consultation may expedite the resolution of any issues.

Respectfully submitted,

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